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(Appears at the end)

RELEVANT DOCKET ENTRIES

Date

1968

May 27—1. File Complaint.

May 27—Issue Summons.

May 27—2. Enter and File Temporary Restraining Order returnable on June 7, 1968 at 9 a.m. in Courtroom No. 1; WEC.

May 27—3. File Pltf's. memorandum of points and authorities.

May 27—cc of Temporary Restraining order issued for service.

May 28—Original of Judge Craig's Notification and Certificate mailed to Judge Chambers; copies thereof mailed to James M. Bush, Jacob Abramson and the Atty. General.

May 29—4. File Summons with Marshal's return show service with temporary restraining order made upon L. J. Pike.

June 3—5. File Pltf's. application for leave to take deposition of deft L. J. Pike; and Enter and File Order that pltf. is granted leave of court to take said deposition within the period of 20 days.

June 3—6. File original Notification of Hearing to the Governor of the State of Ariz. and the Attorney General, and mail copies thereof to each of said officials by certified mail.

June 3—7. File Pltf's. Notice of taking the deposition of deft. L. J. Pike.

June 3—8. Enter and File Order by Judge Richard H. Chambers designating the following to preside in this action: Hon. Charles M. Merrill, U. S. Circuit Judge for the Ninth Circuit; Hon. Walter E. Craig; and Hon. C. A. Muecke.

June 4.—9. File Affidavit of James M. Bush of service of notice of taking deposition of L. J. Pike upon the Attorney General.

June 6—10. File Application of Jacob Abramson for limited admission, with consent by James M. Bush; and Enter and File

Order that Jacob Abramson is hereby permitted to appear and participate in this action.

June 7—11. File Deposition of L. J. Pike, in 2 volumes.

June 7—12. File Deposition of David Gipe.

June 7—Minute Entry: This case called for hearing on application for preliminary injunction pursuant to Temporary Restraining Order. Jacob Abramson, James Bush, Rex E. Lee and Tom Miller present. Enter proceedings of hearing. It is ordered that a preliminary injunction issue, Jacob Abramson to prepare formal order within 10 days and if counsel for deft. has any objections, the same to be filed within 5 days thereafter. In the event counsel are able to arrive at an agreed statement of facts, it is ordered that pltf. file opening trial brief on law by August 1, 1968, that the response be filed by September 1, 1968 and that the reply be filed by September 23, 1968. It is further ordered that this case is set for trial in Courtroom No. 1, on October 7, 1968 at 9:30 a.m.; 3 judges.

June 18—13. Enter and File Order that plaintiff's application for preliminary injunction is granted pending trial of this matter, and further ordered that said preliminary injunction shall remain in full force and effect until final hearing in this case and further order of this Court, signed by three Judges on June 7, 1968.

June 18—Form AO 145 (notice to counsel) mailed to Evans et al and the Atty. General.

June 24—14. File ANSWER of the defendant.

July 26—15. Enter and File Order that the time within which plaintiff shall file its opening brief is continued to Sept. 1, 1968. The date to respond thereto is continued to Oct. 23, 1968. Trial date is continued to Nov. 15, 1968 at 9:30 a.m.; 3 judges.

Sept. 23—16. File Reporter's Transcript of Proceedings dated June 7, 1968.

Oct. 30—17. File Defendants' Motion for leave to file typewritten briefs; and Enter and File Order that the parties may file typewritten briefs, reproduced by xeroxing or other reproducing processing in the instant case. WEC

Nov. 5—18. File Defendants' Opening Brief.

Nov. 5—19. File Parties' Stipulation of Facts.

Nov. 5—20. File Plaintiff's Opening Brief.

Nov. 14—21. File Plaintiff's Reply Brief.

Nov. 14—22. File Defendants' Reply Brief.

Nov. 15—Minute entry: On for trial. James Bush and Jacob Abramson pres. for Plaintiff. Hamilton McRae, Rex Lee, and Thomas Miller pres. for Defendants. Case argued to court by respective counsel. It is ordered that said matter is submitted and taken under advisement.

1969

Jan. 29—23. File OPINION; and Enter and File Order that the injunction heretofore issued restraining the defendant L. J. Pike, his deputies etc. from threatening, ordering or attempting or acting (a) to hinder, interfere with, impede, restrain or prevent plaintiff from harvesting its crops of cantaloupe and transporting said cantaloupe in bulk into the State of California; (b) to seize and take possession of any crops harvested, loaded or transported; (c) to take any action to forfeit bonds, or to deny or revoke licenses of the plaintiff, or (d) to take any other action penalizing, injuring or damaging plaintiff on account of or because of such harvesting etc. in interstate commerce shall be permanent; 3 judges.

Jan. 29—Copies of opinion and order given to 3 judges and mailed to Evans et al, Jacob Abramson, Attorney General and Jennings et al.

Feb. 4—24. File Defendants' Motion for Rehearing and/or Clarification. (Copies for 3 Judges).

Feb. 10—25. File Plaintiff's objection and Response to De-

fendants' Motion for rehearing etc. (copies for 3 Judges)

Mar. 10—26. File OPINION and Enter and File Order that the injunction heretofore issued restraining the defendant L. J. Pike, his deputies etc. from in any manner attempting or acting (a) to hinder, interfere with etc. or prevent plaintiff from harvesting its crops of cantaloupe grown by plaintiff in the State of Arizona, in the vicinity of Parker, Arizona, and from transporting said cantaloupe in bulk into the State of California; (b) to seize and take possession of any crops harvested, loaded or transported; (c) to take any action to forfeit bonds, or to deny or revoke licenses of the plaintiff because of harvesting, loading or transporting such crops; or (d) to take any other action penalizing, injuring or damaging plaintiff on account of or because of such harvesting, loading or transporting in intrestate commerce shall be permanent; 3 judges.

Mar. 10—Copies of opinion and order mailed to Evans et al, Jacob Abramson, Attorney General, Jennings et al and to Judge Merrill, Judge Craig and Judge Muecke.

Apr. 1—27. File Defendants' Motion for Rehearing.

Apr. 1—Copies of Motion for Judge Merrill, Judge Craig and Judge Muecke.

Apr. 7—28. File Plaintiff's Objections to Motion for Rehearing.

May 1—29. Enter and File Order that defendants, having filed a Motion for Rehearing, and plaintiffs having filed its objections thereto, and the Court being fully advised in the premises, it is ordered that the Motion for Rehearing is denied; 3 judges.

May 1—Copies of order mailed to Abramson and Church; Evans et al, the Attorney General and Jennings et al.

May 2—30. File Defendants' Notice of Appeal to Supreme Court of U.S., showing service on plaintiff's counsel.

May 12—31. File Defendants' Resignation Re Contents of Record on Appeal (letter to clerk).

May 16—32. File Plaintiff's Designation Re Contents of Record on Appeal, with copy of the two letters designated attached.

June 18—33. File Reporter's Transcript of Proceedings — Hearing held at Phoenix on November 15, 1968 (original and free copy).

June 25—Record on appeal consisting of all original documents including deposition exhibits and certified copy of docket entries, certified and transmitted to Supreme Court of the United States, Washington, D.C., with request that original documents be returned upon disposition of the appeal.

Aug. 28—34. File Stipulation Between Appellant and Appellee Regarding Errors in the Transcript of Proceedings.

Sept. 2—Supplemental record on appeal, consisting of Stipulation filed 8-28-69 and clerk's certificate, transmitted to Clerk Supreme Court of United States.

Oct. 20—35. File Notice from Supreme Court of the United States Re Jurisdiction.

APPENDIX

Supreme Court of the United States

OCTOBER TERM, 1969

No. 301

LOREN J. PIKE, AS SUPERVISOR OF INSPECTION, ARIZONA FRUIT AND VEGETABLE STANDARDIZATION SERVICE,
Appellant,

versus

BRUCE CHURCH, INC., A CALIFORNIA CORPORATION,
Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

FILED JUNE 30, 1969

PROBABLE JURISDICTION NOTED OCTOBER 13, 1969

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

BRUCE CHURCH, INC. a California corporation, Plaintiff, vs. L. J. PIKE, as Supervisor of Inspection of the Arizona Fruit and Vegetable Standardization Service; and DOE ONE, DOE TWO, DOE THREE, DOE FOUR, DOE FIVE, DOE SIX, DOE SEVEN, DOE EIGHT, DOE NINE and DOE TEN, Defendants.	Civil Action No. 6702 COMPLAINT

Plaintiff complains of the Defendants and each of them, and for a cause of action alleges:

I.

This action arises under the Commerce Clause, Article I, Section 8, of the Constitution of the United States, and the Supremacy Clause, Article VI, of the Constitution of the United States, as hereinafter more fully appears. The value of the right of Plaintiff, derived from Federal law, to engage in interstate transportation of its own products, free from undue or unreasonable restraints by the Defendants, exceeds, exclusive of interest and costs, the sum of $10,000.00, and the amount in controversy herein exceeds the sum of $10,000.00, exclusive of interest and costs.

II.

Plaintiff is a corporation incorporated under the laws of the State of California and has its principal place of business in the State of California.

The Defendant, L. J. PIKE is a citizen of the State of Arizona and is the Supervisor of Inspection of the State of Arizona Fruit and Vegetable Standardization Service.

The Defendants, DOE ONE, DOE TWO, DOE THREE, DOE FOUR, DOE FIVE, DOE SIX, DOE SEVEN, DOE EIGHT, DOE NINE and DOE TEN, and each of them, are citizens of the State of Arizona.

That the true names of Defendants, DOE ONE, DOE TWO, DOE THREE, DOE FOUR, DOE FIVE, DOE SIX, DOE SEVEN, DOE EIGHT, DOE NINE and DOE TEN are unknown to Plaintiff, and the said Defendants are sued herein in their fictitious names. Plaintiff prays leave to substitute the true names of said Defendants together with appropriate allegations when their true names are ascertained.

III.

This suit is of a civil nature and is brought for the purpose of obtaining a declaratory judgment pursuant to 28 United States Code, Section 2201, that the State of Arizona Fruit and Vegetable Standardization laws, Arizona Revised Statutes, Title 3, Chapter 3, Article 4, and in particular, but without limitation, the following sections thereof:

Section 3-499, entitled "Labeling of containers; subcontainers; mislabeling; controlling laws";

Section 3-503, entitled "CANTALOUPES; definitions; serious damage; standard packs; crate markings; irregular sized container; exceptions";

Section 3-518, entitled "Exempt Transactions";

Section 3-522, entitled "Violations; penalty";

Section 3-482, entitled "Scope of article; containers";

Section 3-486, entitled "Supervisor; inspection powers";

Section 3-487, entitled "Supervisor; rule making";

Section 3-488, entitled "Supervisor; investigation of transactions and records";

Section 3-492, entitled "Annual licensing of dealers; application; fee; revocation for misrepresentations";

Section 3-493, entitled "Bond of applicant; action for damages";

Section 3-494, entitled "Denial or revocation of license";

are unreasonable, arbitrary, capricious, discriminatory, unlawful, unconstitutional, void and unenforceable if, to the extent that, and insofar as, said laws and any of the provisions thereof are interpreted, applied, enforced or given effect so as to hinder, interfere with, impede, prevent, restrain or prohibit Plaintiff from harvesting its crops of cantaloupes grown by Plaintiff in the State of Arizona in, around and about Parker, Arizona (where Plaintiff does not have processing or packing facilities for cantaloupe crops), placing the harvested cantaloupes loose in trailers and transporting said crops so loaded on trailers by truck across the state line of Arizona into the State of California to Blythe (where Plaintiff does have processing and packing facilities) for processing, packing and shipping in standard containers and under standards and requirements the same as or equivalent to those which would be applicable if these crops were processed, packed, and shipped in the State of Arizona; as well as for the purpose of obtaining an order restraining and enjoining the Defendants, and each of them, from threatening, attempting or acting to hinder, interfere with, impede, prevent, restrain or prohibit the Plaintiff from harvesting, loading, and transporting its cantaloupe crops in the manner and for the purpose aforesaid, across the state line of Arizona into the State of California.

IV.

Plaintiff is at the present time and has for many years past been engaged in the business of growing, harvesting, transporting, processing, packing, and shipping fruits and vegetables in the states of Arizona and California for sale in markets

throughout the Nation. In the State of Arizona, Plaintiff has carried on operations at various locations, including Parker, Yuma, Harquahala Valley, Aguila, and Horne. In the State of California, Plaintiff has carried on operations at various locations, including the Salinas Valley, Blythe, and the Imperial Valley. Plaintiff has maintained processing and packing sheds, equipment and facilities of various kinds required in connection with its operations at the above-mentioned locations, but Plaintiff does not have at the present time at Parker, Arizona, processing or packing facilities required for the handling of cantaloupe crops or preparing them for shipment in interstate commerce.

V.

On or about February 5, 1964, Plaintiff entered into a certain Agricultural Lease with the Secretary of Interior of the United States of America, as Lessor, the Commissioner of Indian Affairs, the Colorado River Indian Agency and the Colorado River Indian Tribes, pursuant to which Plaintiff undertook to develop approximately 6,400 acres of uncultivated, arid lands in the Colorado River Indian Reservation, located at Parker, Arizona. At the time the lease was signed, the land was arid wasteland covered with mesquite. Under the lease, which is for a term of 25 years, Plaintiff, in addition to being required to pay rent in excess of $1,500,000.00, undertook to improve and develop the land by extensive clearing operations, leveling the land, and constructing a complex, modern and efficient irrigation system so that crops could be grown on the land. Continuously since taking possession of the lands pursuant to the lease, Plaintiff has been engaged in the planning, improving, developing and operating of the lands. In the process of improving and developing the lands, Plaintiff has been required to carry on extensive and costly operations by chain dragging the land with tractors to clear off the mesquite, chiseling out the roots and burning the mountains of mesquite; moving approxi-

mately six million (6,000,000) cubic yards of dirt to create a uniform, level soil structure several feet thick in each of the 320 fields into which the farm was surveyed; constructing a five-foot deep, concrete-lined canal approximately three miles in length to carry Colorado River water to the fields; laying approximately 41 miles of poured-in-place concrete irrigation pipe throughout the farm; and finishing the land by grading it, an operation which involved the movement of approximately another one million (1,000,000) cubic yards of dirt. In addition, Plaintiff has constructed on the land implement sheds and other service buildings. Plaintiff has also built six two-bedroom houses and facilities for 22 house trailers for its employees. Plaintiff, in connection with the development and operation of the farm has furnished employment to members of the Colorado River Indian Tribes as well as others residing in the Parker area. Plaintiff's operations and activities in this connection have involved the expenditure of very considerable sums. Attached hereto and made a part hereof as Exhibit "A" is a folder prepared by Plaintiff as part of its recent dedication ceremonies, which contains a pictorial representation of the work accomplished at Parker.

VI.

As a result of its work and efforts as aforesaid, Plaintiff has succeeded in accomplishing a state of development originally projected for five years within a period of about four years. Approximately 6,300 acres of crops are now under cultivation, including 501 acres of cantaloupes which will mature and be ready for harvest on or about June 10, 1968. The period of harvest will last about three weeks. Cantaloupes are a highly perishable crop and must be harvested, processed and packed for shipment promptly on reaching maturity or the crop will spoil and become worthless.

VII.

Plaintiff has for many years been engaged in the business of selling and shipping cantaloupes to buyers and receivers in vari-

ous states of the United States, and the cantaloupe crops grown by the Plaintiff at Parker were grown for the purpose of supplying the requirements of its customers and the ultimate consumer, the general public, throughout the nation. Loss or curtailment of Plaintiff's cantaloupe crop at Parker will not only cause irreparable damage and injury to the Plaintiff in its relations with its customers, but will also cause serious injury and damage to the Plaintiff in its competitive position in the cantaloupe markets of the nation and will result in substantially diminished cantaloupe crops in interstate markets, with resultant higher consumer prices.

VIII.

Although Plaintiff does not have at the present time, at its farm at Parker, the processing and packing facilities needed for the handling of cantaloupe crops and preparing them for shipment to market in interstate commerce, Plaintiff does have such facilities under lease at Blythe, California, a distance of approximately 31 miles from the farm at Parker. These facilities were used by Plaintiff in the year 1967 for the processing and packing of its cantaloupe crops grown at Parker in 1967, that being the first year in which such crops had been grown by Plaintiff at the Parker farm. The crops were harvested, loaded loose in trailers and transported to Blythe for processing and packing. This was done with the full knowledge and aquiescence of the Defendants. The transportation of said cantaloupe crops, in the manner described, across the state line of Arizona into California was thus permitted, notwithstanding that the aforesaid Arizona Fruit and Vegetable Standardization laws were then also in effect. Plaintiff is informed and believes, and on such information and belief alleges, that for years past, various other growers and shippers have also been permitted, with the full knowledge and acquiescence of Defendants, to transport cantaloupe crops, as well as other agricultural crops, in

bulk across the state line of Arizona into the State of California for processing, packing and shipment in interstate commerce. In reliance on this long administrative practice, and in reliance on the application given by Defendants to the law during the year 1967 in respect of its cantaloupe crops grown at Parker, Plaintiff undertook to plant and grow another cantaloupe crop to mature in 1968, which it proposes to harvest, place in trailers and transport to Blythe for processing and packing, as aforesaid. However, Defendant, L. J. PIKE, Supervisor of Inspection of the State of Arizona Fruit and Vegetable Standardization Service and the other Defendants have, by notice to Plaintiff and other diverse acts, threatened to hinder, interfere with, impede, restrain, prevent and prohibit Plaintiff from loading and transporting its cantaloupe crops in the manner and for the purpose aforesaid, across the state line of Arizona into California; and if not restrained and enjoined by this Court, the Defendants, and each of them, will continue to threaten and will attempt and will act to hinder, interfere with, impede, restrain, prevent and prohibit the Plaintiff from loading and transporting its cantaloupe crops in the manner and for the purpose aforesaid, across the state line of Arizona into California.

IX.

Defendants, and each of them, seek to hinder, interfere with, impede, restrain, prevent and prohibit such loading and transportation by Plaintiff of its cantaloupe crops across the state line of Arizona into California in the manner and for the purpose aforesaid on the basis of the provisions of the Arizona Fruit and Vegetable Standardization laws hereinabove referred to in paragraph III. Such laws, among other provisions, state, in Section 3-503, that ". . . All Cantaloupes shall be packed in regular compact arrangement in closed standard containers approved by the supervisor. . . .", with certain stated exceptions

not applicable here; and such laws provide further certain penal provisions, as in Section 3-522, that:

"B. It is also unlawful:

1. To pack, cause to be packed, sell, offer for sale, deliver for shipment, load, ship or transport for shipment any fruits or vegetables which do not conform to the requirements of this article.

2. To prepare, deliver for shipment, load, ship, transport, offer for sale or sell for shipment, a deceptive pack, load, arrangement or display of fruits or vegetables, or to mislabel any container or display of the fruits or vegetables.

C. A person violating a provision of this section, or a provision of this article other than provided in this section, is guilty of a misdemeanor."

and such laws further permit the seizure by Defendant, L. J. PIKE, of fruits and vegetables packed, delivered for shipment, loaded, shipped or being transported in violation of the law; and provide further for the forfeiture of bonds and denial or revocation of licenses for violations of the provisions of the law.

X.

The State of California also has standardization laws which apply to cantaloupe crops grown in that state and processed and packed for shipment in that state. These are contained in the California Agricultural Code, Sections 3, 42941, 43251, 45633, 45663, 45664, and other sections. Among the provisions of such Code, are provisions (Sections 45633, 45663 and 45664) which provide for packing of cantaloupes in standard containers of the same sizes and descriptions as those prescribed in Arizona. These standard containers are of uniform dimensions and specifications adopted by the pertinent authorities as part of a plan to achieve uniformity among growers and shippers in the Western States generally. They are so used by growers, many of whom carry out the same growing, packing and shipping operations in the several states, such as Arizona and California, as does

Plaintiff. The conditions and standards provided in the Standardization laws of Arizona and California are likewise the same or very similar and are based on the same primary objectives namely to avoid deceptive packs.

XI.

Accordingly, a case of actual controversy has arisen and now exists between Plaintiff and the Defendants, and each of them, in the following respects:

(a) Defendants, and each of them, contend that the Arizona Fruit and Vegetable Standardization laws prohibit the transportation of cantaloupes loose in trailers across the state line; and that, accordingly, it would be unlawful and in violation of the laws of the State of Arizona for Plaintiff to harvest its cantaloupe crops at Parker, Arizona, place them loose in trailers, and so transport them across the state line to Blythe, California, for processing and packing at facilities of Plaintiff there, in standard containers the same as those approved in Arizona preparatory to shipment, and shipment, to markets in interstate commerce.

(b) Plaintiff contends that:

(1) It has the right under the Constitution and laws of the United States to harvest its crops of cantaloupes grown at Parker, Arizona, place them loose in trailers, and so transport them across the state line to its facilities at Blythe, California for processing and packing in the manner and under the conditions heretofore described.

(2) Any interpretation, application or enforcement of the Arizona Fruit and Vegetable Standardization laws in the manner proposed and threatened by Defendants would constitute an unreasonable and undue burden upon, and obstruction of, interstate commerce, in violation of the Commerce Clause, Article I, Section 8, of the Constitution of the United States and would be violative of Plaintiff's rights thereunder as aforesaid.

(3) The Congress of the United States by various enactments, including the Agricultural Adjustment Act, of May 12, 1933, Chapter 25, Title 1, 48 Stat. 31 et. seq., Title 7 U.S. Code, § 601, et. seq., and subsequent amendments thereof, the Act of March 4, 1915, Chapter 158, 38 Stat. 1186, 1187, 15 U.S. Code, § 234-236; the Act of August 31, 1916, Chapter 426, 39 Stat. 673-674, 15 U.S. Code, § 251-256; the Act of May 21, 1928, Chapter 664, 45 Stat. 685-687, 15 U.S. Code, § 257-257i; and other enactments, has entered and pre-empted the field in respect of regulating the containerization requirements in connection with packaging, transporting, shipping or handling of agricultural products and commodities in interstate commerce, and accordingly, the state laws and regulations sought to be enforced by the Defendants herein are in derogation of the rights of the Plaintiff and are violative of the Supremacy Clause, Article VI, of the Constitution of the United States.

. . .

XII.

Processing and packing facilities required for the handling of Plaintiff's cantaloupe crops at Parker, Arizona, cannot be constructed by June 10, when the cantaloupe crops will reach maturity, or in sufficient time before the cantaloupe crops must be harvested. If Plaintiff is prevented by Defendants from transporting its cantaloupe crops across the state line loose in trailers for the purposes aforesaid, it would result in the total loss of the crop, with resulting loss and damage to Plaintiff, in the amount of approximately $300,000.00. Any such conduct by Defendants would also cause injury and damage to Plaintiff in the respects heretofore alleged and would, further, constitute and cause serious interference by Defendant with Plaintiff's contractual relations with the Secretary of Interior of the United States of America, as Lessor, the Commissioner of Indian Affairs, the Colorado River Agency and the Colorado River Indian Tribe,

with the lessor of Plaintiff's processing and packing facilities at Blythe, and with the interstate customers of Plaintiff, to whom continuity of supply is of great importance. Plaintiff is informed and believes, and on such information and belief alleges, that if the Defendants succeed in carrying out their threats, this will seriously interfere with, and materially impair, the successful development of the Indian lands administered by the United States Department of the Interior in the Parker area, and tend to discourage and frustrate private investment in the development of these waste lands into productive farm lands.

XIII.

Further, in order to pack and ship its cantaloupe crops, it is necessary that Plaintiff have a large supply of packing crates and ice, which are inventoried at Blythe, California in advance, so as to be ready for immediate use when the crops mature and the harvest commences. Plaintiff has, of necessity, had to place orders for such supplies and must make further commitments as well as arranging for availability of the required railroad cars for interstate shipments if the crop is not to be lost for lack of these supplies and equipment. If Defendants are not restrained and enjoined from carrying out their orders and threats, Plaintiff will sustain heavy loss in respect of the supplies already committed for and will be placed in great jeopardy in respect of the supplies and equipment still to be obtained.

XIV.

The products here involved are not being brought *into* the State of Arizona from other states, but are to be taken *out* of the State of Arizona for processing and packing, in like standard containers and under like conditions. If and to the extent that the Arizona Fruit and Vegetable Standardization laws are interpreted applied, given effect or enforced to prevent this, such laws un-

reasonably discriminate against out-of-state processors and packers in favor of Arizona processors and packers and are unlawful and void.

XV.

If and to the extent that the action threatened by Defendants or the interpretation or effect being given by them to the Arizona laws is sought to be based upon the police power of the state, that is to say the protection of the public health, safety, or welfare of the citizens of the State of Arizona, this cannot serve as any legal or valid basis for the infringement upon interstate commerce which it would effect, since the crops so transported will not be returned for marketing or sale in the State of Arizona until they have been processed and packed in compliance with the Fruit and Vegetable Standardization laws of the State of California, which have standardization requirements like those of Arizona.

XVI.

If and to the extent that the action threatened by the Defendants or the interpretation or effect sought to be given by them to the Arizona laws has as their purpose and object to serve the economic interests of Arizona growers, packers and shippers to the detriment and disadvantage of those seeking to accomplish their processing, packing and shipping in the State of California under like standards and conditions, such action and such laws constitute an unreasonable discrimination against and burden upon those growers, processors and packers in interstate commerce and are unlawful and void.

XVII.

Plaintiff has exhausted its administrative remedies and has no adequate remedy at law, and will be irreparably injured by the wrongful and unlawful acts of the Defendants in threatening, ordering, attempting, or acting to enforce the provisions of the

Arizona Fruit and Vegetable Standardization laws against Plaintiff, so as to hinder, interfere with, impede, restrain, prohibit and prevent Plaintiff from transporting its cantaloupe crops loose in trailers across the state line of Arizona to Plaintiff's processing and packing facilities at Blythe, California, unless the Defendants, and each of them, are restrained and enjoined by this Court from so threatening, ordering, attempting to act, or acting.

WHEREFORE, Plaintiff demands:

(1) That a declaratory judgment issue declaring that the provisions of the Arizona Fruit and Vegetable Standardization laws are violative of Plaintiff's rights under the Constitution and superior laws of the United States and are void and unenforceable against Plaintiff if, to the extent that, and insofar as, said laws and any of the provisions thereof are interpreted, applied, enforced or given effect so as to hinder, interfere with, impede, prevent, restrain or prohibit Plaintiff from harvesting its crops grown in Arizona, placing them loose, in bulk, in trailers and transporting them across the state line of Arizona into the State of California, to processing and packing facilities of Plaintiff in California for processing and packing in standard containers like those in use in Arizona, preparatory to shipment and shipment to buyers or consignees in the various states of the nation and foreign commerce.

(2) That a mandatory injunction issue, restraining and enjoining the Defendants, and each of them, and their deputies, agents, servants, employees, and attorneys, and all persons in active concert and participation with them, from in any manner, either directly or indirectly, threatening, ordering, attempting or acting, (a) to hinder, interfere with, impede, restrain, prohibit or prevent the Plaintiff from harvesting its crops of cantaloupes, grown by Plaintiff in the State of Arizona, in, around or about Parker, Arizona, and from placing the same loose

in trailers, in bulk, and transporting them across the state line of Arizona into the State of California for processing and packing in standard containers like those in use in Arizona, preparatory to shipment and shipment to buyers or consignees in the various states of the nation and foreign commerce; (b) to seize and take possession of any crops so harvested, loaded or transported; (c) to take any action to forfeit bonds or to deny or revoke licenses of Plaintiff because of such harvesting, loading or transportation of such crops; or (d) to take any other action penalizing, injuring or damaging Plaintiff on account of or because of such harvesting, loading or transporting.

(3) That, pending a hearing upon the merits of this case, a preliminary injunction issue, restraining and enjoining the Defendants, and each of them, and their deputies, agents, servants, employees, and attorneys, and all persons in active concert and participation with them, from in any manner, either directly or indirectly, threatening, ordering, attempting or acting (a) to hinder, interfere with, impede, restrain, prohibit or prevent the Plaintiff from harvesting its crop of cantaloupes, grown by Plaintiff in the State of Arizona, in, around or about Parker, Arizona, and from placing the same loose in trailers, in bulk, and transporting them across the state line of Arizona into the State of California for processing and packing in standard containers like those in use in Arizona, preparatory to shipment and shipment to buyers or consignees in the various states of the nation and foreign commerce; (b) to seize and take possession of any crops so harvested, loaded or transported; (c) to take any action to forfeit bonds or to deny or revoke licenses of Plaintiff because of such harvesting, loading or transportation of such

crops; or (d) to take any other action penalizing, injuring or damaging Plaintiff on account or because of such harvesting, loading or transporting.

(4) That pending hearing upon the preliminary injunction and notice of the same as required by law, a temporary restraining order issue, without notice, restraining and enjoining the Defendants, and each of them, and their deputies, agents, servants, employees and attorneys, and all persons in active concert and participation with them, from in any manner, either directly or indirectly, threatening, ordering, attempting or acting (a) to hinder, interfere with, impede, restrain, prohibit or prevent the Plaintiff from harvesting its crops of cantaloupes, grown by Plaintiff in the State of Arizona, in, around or about Parker, Arizona, and from placing the same loose in trailers and transporting them across the state line of Arizona into the State of California for processing and packing in standard containers like those in use in Arizona, preparatory to shipment and shipment to buyers or consignees in the various states of the nation and foreign commerce; (b) to seize and take possession of any crops so harvested, loaded or transported; (c) to take any action to forfeit bonds or to deny or revoke licenses of Plaintiff because of such harvesting, loading or transportation of such crops; or (d) to take any other action penalizing, injuring or damaging Plaintiff on account or because of such harvesting, loading or transporting.

(5) That a three-judge district court be convened as required by Section 2281, Title 28, United States Code, for the hearing of this action and of the Plaintiff's demand for a preliminary injunction; and that the Chief Judge of the United States Court of Appeals for the Ninth Circuit be notified pursuant to Section

2284, Title 28, United States Code, of the presentation of Plaintiff's application for injunction, in order that the necessary designation of judges for said Court may be made.

EVANS, KITCHEL & JENCKES
By James M. Bush
JAMES M. BUSH
363 North First Avenue
Phoenix, Arizona 85003

ABRAMSON & CHURCH
By Jacob Abramson
315 Crocker-Citizens Bank Bldg.
Salinas, California 93901
Attorneys for Bruce Church, Inc.

STATE OF ARIZONA)
County of Maricopa) ss.

DAVID R. GIPE, being duly sworn, deposes and says that he resides at 1150 Avenue "C", Yuma, County of Yuma, Arizona; that he is the Assistant Secretary of BRUCE CHURCH, INC., Plaintiff herein; and that he has read the foregoing complaint and knows the contents thereof and that the same are true of his own knowledge except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes them to be true.

David R. Gipe
DAVID R. GIPE

Subscribed and sworn to before me this 27th day of May, 1968.

James M. Bush
Notary Public

My Commission Expires July 14, 1968.

"Exhibit A to the Complaint — The Story of the Bruce Church, Inc., Parker, Arizona Farm" is omitted from the Appendix here, but appears after page 50 infra.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

BRUCE CHURCH, INC., a California corporation,

Plaintiff,

vs.

L. J. PIKE, as Supervisor of Inspection of the Arizona Fruit and Vegetable Standardization Service; and DOE ONE, DOE TWO, DOE THREE, DOE FOUR, DOE FIVE, DOE SIX, DOE SEVEN, DOE EIGHT, DOE NINE and DOE TEN,

Defendants.

Civil Action
No. 6702

TEMPORARY
RESTRAINING
ORDER

This cause came on to be heard on Plaintiff's verified complaint and it appearing to the court that the Defendants and each of them are committing acts and are about to commit acts as set forth in Plaintiff's complaint and will continue to do so unless restrained by an order of this court, and that immediate and irreparable injury, loss or damage will result to Plaintiff before notice can be given and the Defendants and their attorney or attorneys can be heard in opposition to the granting of a temporary restraining order, in that Plaintiff is growing a crop of cantaloupes on its farm at Parker, Arizona, and such crop will be ready for harvesting on or about the 10th of June, 1968, and such cantaloupes are a highly perishable crop and must be harvested, processed and packed for shipment promptly on reaching maturity, and if this is not done the crop will spoil and become worthless, and there are no facilities for the processing and packing of the said crop at the Plaintiff's farm

at Parker, Arizona, but such facilities are available to and are under lease to Plaintiff at Blythe, California, and Defendants have ordered and threatened to hinder, interfere with, impede, restrain, prohibit or prevent the Plaintiff from harvesting its crop of cantaloupes grown by Plaintiff in the State of Arizona in, around or about Parker, Arizona, and from placing the same loose, in bulk, in trailers and transporting them across the State Line of Arizona into the State of California for processing and packing in standard containers, like those in use in Arizona, preparatory to shipment and shipment to buyers or consignees in the various states of the nation and foreign commerce, and by such action Defendants would prevent Plaintiff from processing and packing such crops promptly upon their reaching maturity, thereby resulting in the loss of such crops due to spoilage;

IT IS ORDERED that Defendants L. J. PIKE, DOE ONE, DOE TWO, DOE THREE, DOE FOUR, DOE FIVE, DOE SIX, DOE SEVEN, DOE EIGHT, DOE NINE, AND DOE TEN, and each of them and their deputies, agents, servants, employees, and attorneys, and all persons in active concert and participation with them be and are hereby restrained from in any manner, either directly or indirectly threatening, ordering, attempting or acting (a) to hinder, interfere with, impede, restrain, prohibit or prevent the Plaintiff from harvesting its crops of cantaloupes, grown by Plaintiff in the State of Arizona, in, around or about Parker, Arizona, and from placing the same loose in trailers and transporting them across the state line of Arizona into the State of California for processing and packing in standard containers like those in use in Arizona, preparatory to shipment and shipment to buyers or consignees in the various states of the nation and foreign commerce; (b) to seize and take possession of any crops so harvested, loaded or transported; (c) to take any action to forfeit bonds or to deny or revoke licenses of Plaintiff because of such harvesting, loading or transportation of such crops; or

(d) to take any other action penalizing, injuring or damaging Plaintiff on account or because of such harvesting, loading or transporting; and it is further

ORDERED that this order expire within 10 days after entry unless within such time the order for good cause shown is extended, or unless the Defendants consent that it may be extended for a longer period; and it is further

ORDERED, that Plaintiff's motion for a preliminary injunction be set down for hearing on the 7th day of June, 1968, at 9 o'clock a.m., at Court Room #1, U.S. Court House, Phoenix, and it is further

ORDERED that copies of this order and of Plaintiff's complaint, together with proper summons issued by the Clerk of this Court, be immediately served by the United States Marshall upon the Defendants.

DONE IN OPEN COURT this 27th day of May, 1968 at 5:00 o'clock p.m.

Walter E. Craig
Judge of the United States
District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

BRUCE CHURCH, INC., a California corporation, Plaintiff, v. L. J. PIKE, as Supervisor of Inspection of the Arizona Fruit and Vegetable Standardization Service, et al., Defendants.	No. Civ-6702 Phx. ANSWER

For its Answer, the defendant admits, denies and alleges as follows:

I

The defendant admits that the amount in controversy in this action exceeds the sum of Ten Thousand ($10,000.00) Dollars, in that the plaintiff would have suffered in excess of that amount had it not been able to ship its 1968 crop. The defendant denies that the conduct of which the plaintiff complains violates any provision of the United States Constitution.

II

Admits that the plaintiff is a corporation incorporated under the laws of the State of California and has its principal place of business in the State of California. Admits that the defendant, L. J. PIKE, is a citizen of the State of Arizona and is the Supervisor of Inspection of the State of Arizona Fruit and Vegetable Standardization Service.

III

Denies the allegations of Paragraph III of the Complaint.

IV

Defendant is without sufficient information to form a belief as to the truth or falsity of the allegations of Paragraph IV of the Complaint and therefore denies the same.

V

Defendant is without sufficient information to form a belief as to the truth or falsity of the allegations of Paragraph V of the Complaint and therefore denies the same.

VI

Defendant is without sufficient information to form a belief as to the truth or falsity of the allegations of Paragraph VI of the Complaint and therefore denies the same.

VII

Defendant is without sufficient information to form a belief as to the truth or falsity of the allegations of Paragraph VII of the Complaint and therefore denies the same.

VIII

Defendant is without sufficient information to form a belief as to the truth or falsity of the allegations of Paragraph VIII of the Complaint and therefore denies the same.

IX

Admits that the relevant provisions of Arizona's Fruit and Vegetable Standardization laws are as cited by Paragraph IX of the Complaint. Admits that the defendant is charged with the responsibility of enforcing, and intends to enforce, the provisions of Arizona's Fruit and Vegetable Standardization laws.

X

Admits that the cited sections of the California Agriculture Code pertain to standardization, and that the State of California has standardization laws which apply to cantaloupe crops grown

in that State and processed and packed for shipment in that State. Denies the balance of the allegations of Paragraph X of the Complaint.

XI

Admits that the defendant takes the position that the Arizona Fruit and Vegetable Standardization laws prohibit the transportation of cantaloupes loose in trailers across the State line where they cannot be packed under the supervision of Arizona's inspectors. Denies that the plaintiff has a constitutional right to transport its cantaloupes grown at Parker, Arizona, loose in trailers across the State line for the purpose of having them packed in the State of California. Denies that the Arizona Fruit and Vegetable Standardization laws, insofar as they prohibit the transportation of cantaloupes loose in trailers across state lines for processing and packing in another state, constitute an unreasonable and undue burden upon, and an obstruction of, interstate commerce in violation of the "commerce clause," Article 1, Section 8, of the Constitution of the United States. Denies that the Congress of the United States or any other Federal entity has entered into and pre-empted the field in respect of regulating the containerization requirements in connection with packaging, transporting, shipping or handling of agricultural products and commodities in interstate commerce.

XII

Defendant is without sufficient information to form a belief as to the truth or falsity of the allegations of Paragraph XII of the Complaint and therefore denies the same.

XIII

Defendant is without sufficient information to form a belief as to the truth or falsity of the allegations of Paragraph XIII of the Complaint and therefore denies the same.

XIV

Admits that the plaintiff proposes to take the products here involved out of the State of Arizona for processing and packing. Denies the balance of the allegations of Paragraph XIV of the Complaint.

XV

Denies the allegations of Paragraph XV of the Complaint.

XVI

Denies the allegations of Paragraph XVI of the Complaint.

XVII

Denies the allegations of Paragraph XVII of the Complaint.

XVIII

Denies all allegations of the Complaint not hereinabove specifically admitted or denied.

WHEREFORE, defendant prays:

1. That the Court after hearing ORDER, ADJUDGE and DECREE that the provisions of the Arizona Fruit and Vegetable Standardization Laws are not violative of plaintiff's rights under the Constitution and laws of the United States in preventing the plaintiff from harvesting the crops grown in Arizona, placing them loose, in bulk, in trailers and transporting them across the State line of Arizona into the State of California for purposes of processing them and packing them in California.

2. That after hearing, the Court dissolve the preliminary injunction against the defendant, entered hereinbefore.

3. That the Court award the defendant its costs incurred in defending this action.

4. That the defendant have such other and further relief as the Court deems just in the premises.

DARRELL F. SMITH
Attorney General of the State of Arizona

By /s/ Thomas A. Miller
Thomas A. Miller
Special Assistant Attorney General
159 Capitol Building
Phoenix, Arizona 85007

JENNINGS, STROUSS, SALMON & TRASK

By /s/ Riney B. Salmon
Riney B. Salmon

By /s/ Rex E. Lee
Special Counsel
111 W. Monroe
Phoenix, Arizona

STATE OF ARIZONA)
County of Maricopa) ss.

L. J. PIKE, being duly sworn, deposes and says that:

He is the Supervisor of Inspection of the Arizona Fruit and Vegetable Standardization Service; and that he has read the foregoing Answer and knows the contents thereof and that the same are true of his own knowledge except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes them to be true.

/s/ L. J. Pike
L. J. Pike

SUBSCRIBED AND SWORN to before me this 24 day of June, 1968.

.....
Notary Public

My commission expires:

.....

Copy of the foregoing Answer
mailed this ..... day of June, 1968, to:
James M. Bush
Evans, Kitchel & Jenckes
363 North First Avenue
Phoenix, Arizona 85003

and

Jacob Abramson
Abramson & Church
315 Crocker-Citizens Bank Building
Salinas, California 93901
Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

BRUCE CHURCH, INC., a California corporation, Plaintiff, -vs- L. J. PIKE, as Supervisor of Inspection of the Arizona Fruit and Vegetable Standardization Service, et al., Defendants.	No. Civ.-6702 Phx. STIPULATION OF FACTS

Plaintiff herein, BRUCE CHURCH, INC., a California corporation, and Defendant herein L. J. PIKE, by and through their respective counsel in this action, do hereby make the following Stipulation of Facts:

I

This action arises under the Commerce Clause, Article I, Section 8, of the Constitution of the United States, and the Supremacy Clause, Article VI, of the Constitution of the United States. The value of the right of Plaintiff, derived from Federal law, to engage in interstate transportation of its own products, free from any undue or unreasonable restraints by the Defendants, exceeds, exclusive of interest and costs, the sum of $10,000.00, and the amount in controversy herein exceeds the sum of $10,000.00, exclusive of interest and costs. The Court has jurisdiction over the subject matter and all necessary parties.

II

Plaintiff is a corporation incorporated under the laws of the State of California and has its principal place of business in the State of California.

The Defendant L. J. PIKE is a citizen of the State of Arizona and is the Supervisor of Inspection of the State of Arizona Fruit and Vegetable Standardization Service. In this capacity he holds the chief executive office in this department of the government of the State of Arizona. He has been a member of the Service since 1936, becoming acting Supervisor in 1961 and Supervisor in 1964.

III

This suit is of a civil nature and is brought for the purposes of:

A. Obtaining a declaratory judgment, as more particularly set forth in plaintiff's complaint, that the State of Arizona Fruit and Vegetable Standardization laws, Arizona Revised Statutes, Title 3, Chapter 3, Article 4, cited in the complaint are unreasonable, arbitrary, capricious, unconstitutional and unenforceable if, to the extent that, and insofar as said laws are interpreted, applied, enforced or given effect so as to hinder, prevent, restrain or prohibit Plaintiff from harvesting its crops of cantaloupes, grown by Plaintiff in the State of Arizona in, around and about Parker, Arizona, placing the harvested cantaloupes loose in trailers and transporting said crops so loaded on trailers by truck across the state line of Arizona into the State of California to Blythe for processing, packing and shipping in standard containers to markets throughout the nation.

B. Obtaining an order restraining and enjoining the Defendants, and each of them, from threatening, attempting or acting to hinder, interfere with, impede, prevent, restrain or prohibit the Plaintiff from harvesting, loading, and transporting its cantaloupe crops in the manner and for the purpose aforesaid, across the state line of Arizona into the State of California.

IV

If called to testify, Mr. O. D. Miller of Phoenix, Arizona, would testify as follows:

A. That he has been active since the 1920s in local and national affairs pertaining to the growing, packing, and shipping of fruits and vegetables, having served, among other positions, as President of the United Fresh Fruit and Vegetable Association, a national organization, in 1945.

B. That he was a co-author of the Arizona Fruit and Vegetable Standardization Act, enacted by the Arizona State Legislature in 1929.

C. That prior to the enactment of the Fruit and Vegetable Standardization Act in 1929, there was not as great a degree of uniformity in quality, size, and type of pack of fruits and vegetables shipped from the State of Arizona as there is today. Poor quality produce shipped by one producer often had an adverse impact upon the reputation of other shippers within the State. Shippers desiring to maintain a reputation for quality produce often encountered difficulties in maintaining such a reputation because of the poor quality of produce shipped by other packers within the State. Accordingly, the purposes for the enactment of Arizona's Fruit and Vegetable Standardization Act were to promote and develop Arizona fruits and vegetables in interstate and foreign commerce and to enhance the return to the producers of fruits and vegetables within this State. The Act has been successful in achieving its purposes.

V

Plaintiff is at the present time and has for many years past been engaged in the business of growing, harvesting, transporting, processing, packing, and shipping fruits and vegetables at numerous farm locations in the states of Arizona and California for sale in markets throughout the Nation. Almost all its products are sold in interstate and foreign commerce. Company headquarters in the State of California are at Salinas, and in the State of Arizona, at Yuma. The cropping program in both states is similar; that is to say, the same kind of agri-

cultural commodities are grown in both states. A continuing and adequate supply of produce is necessary for good customer relations. The Company is diversified in agricultural field crops, cotton and a number of affiliated crops, that tend to build the soil and maintain the farm unit in good state of productivity.

VI

If called to testify, officers of plaintiff would testify as follows:

A. The Plaintiff's operations are organized and planned so as to provide a continuous supply of agricultural products to its buyers throughout the country. By taking advantage of growing seasons in different parts of the West, Bruce Church, Inc., is able to supply produce of various types, including cantaloupes, to its buyers over periods of several months, whereas, if operations were concentrated in one locality, each type of crop would mature all at one time and would therefore reach the market all at one time. By conducting its operations in several localities in different states, Bruce Church, Inc., is able not only to produce greater quantities of agricultural commodities, but it is also able to spread out the supply more evenly so as to avoid to some extent the ups and downs of the produce market. This spreading-out of supplies is to the advantage not only of Bruce Church, Inc., but also to the buyers and to the ultimate consumers throughout the nation, since price fluctuations at all levels are thereby reduced.

B. In order to conduct business-like operations, it is necessary for Bruce Church, Inc. to plan and utilize facilities in the most economical manner. The crops can only be grown where the land and the climate are suitable and fit in with the overall marketing plans of Plaintiff. In order to achieve the above-mentioned spreading-out of harvest times, the crops must be grown in diverse areas. On the other hand, it is possible in some situations to locate packing and processing facilities in a centralized location so as to handle the crops from several surrounding

growing areas. If each crop grown at each separate location had to be processed and packed at the growing site, it would not be economically feasible to provide the large, well-equipped packing and processing facilities which are necessary to insure that the produce reaching the market is of the highest quality. Not only would the facilities of necessity be less refined, but also Plaintiff would unnecessarily be subjected to the vagaries of the migrant labor force which travels throughout the western states following the crop harvests. If its crops were packed and processed separately at each growing site, Plaintiff would be unable to train and retain the highly skilled labor force that is necessary in inspecting, handling, processing and packing its commodities. However, where two or more growing areas are close enough to a central location so that the crops can be transported to that central location for processing and packing, it then becomes economically feasible to construct a large, well-equipped packing and processing facility which can be used to process crops maturing at different times in different areas. Not only would this insure the availability of sophisticated equipment, but also it would make it possible for plaintiff to train and retain highly skilled labor over a long period of time in order to handle properly the several crops and harvests which could be transported to the central packing facility.

VII

In the State of Arizona, Plaintiff has carried on and is carrying on operations at various locations, including, Parker, Yuma, Harquahala Valley, Aguila, and Horne. In the State of California, Plaintiff has carried on and is carrying on operations at various locations, including the Salinas Valley, San Joaquin Valley, Imperial Valley and Blythe. In each of these locations, Plaintiff owns or leases lands which it farms. Presently under cultivation in all of the company's locations are 25,000 to 30,000 acres. Approximately 15,000 are in the State

of Arizona. Plaintiff has maintained and does now maintain processing and packing sheds, equipment and facilities of various kinds required in connection with its operations at the above-mentioned locations, but Plaintiff does not have at the present time at Parker, Arizona, processing or packing facilities required for the handling of cantaloupe crops or preparing them for shipment to market in interstate commerce.

The Company has carried on farming activities in the State of Arizona for many years and has taken an active part in research programs of the College of Agriculture and Extension Service of the University of Arizona and in the development of fertility studies of numerous crops, including cantaloupes, lettuce, citrus, and grapes. It is regarded in the industry as a company maintaining high standards of quality and service. Defendant himself has described Plaintiff as "one of the finest in the business." (Def. Depo. June 5, 1968, p. 63, l. 12-13.)

VIII

On or about February 5, 1964, Plaintiff entered into a certain Agricultural Lease with the Secretary of Interior of the United States of America, as Lessor, the Commissioner of Indian Affairs, the Colorado River Indian Agency and the Colorado River Indian Tribes, pursuant to which Plaintiff undertook to develop approximately 6,400 acres of uncultivated, arid lands in the Colorado River Indian Reservation, located at Parker, Arizona. At the time the lease was signed, the land was arid wasteland covered with mesquite. Under the lease, which is for a term of 25 years, Plaintiff, in addition to being required to pay rent in excess of $1,500,000.00, undertook to improve and develop the land by extensive clearing operations, leveling the land, and constructing a complex, modern and efficient irrigation system so that crops could be grown on the land. Continuously since taking possession of the lands pursuant to the lease, Plaintiff has been engaged in the planning, improving, developing

and operating of the lands. In the process of improving and developing the lands, Plaintiff has been required to carry on extensive and costly operations by chain dragging the land with tractors to clear off the mesquite, chiseling out the roots and burning the mountains of mesquite; moving approximately six million (6,000,000) cubic yards of dirt to create a uniform level soil structure several feet thick in each of the 320 fields into which the farm was surveyed; constructing a five-foot deep, concrete-lined canal approximately three miles in length to carry Colorado River water to the fields; laying approximately 41 miles of poured-in-place concrete irrigation pipe throughout the farm; and finishing the land by grading it, an operation which involved the movement of approximately another one million (1,000,000) cubic yards of dirt. In addition, Plaintiff has constructed on the land implement sheds and other service buildings. Plaintiff has also built six two-bedroom houses and facilities for 22 house trailers for its employees. Plaintiff, in connection with the development and operation of the farm has furnished employment to members of the Colorado River Indian Tribes as well as others residing in the Parker area. Plaintiff's operations and activities in this connection have involved and will continue to involve the expenditure of very considerable sums, amounting to between 3 and 3½ million dollars. Attached hereto and made a part hereof as Exhibit "A" is a folder prepared by Plaintiff as part of its recent dedication ceremonies, which contains a pictorial representation of the work accomplished at Parker.

IX

As a result of its work and efforts as aforesaid, Plaintiff has succeeded in accomplishing a state of development originally projected for five years within a period of about four years. Approximately 6,300 acres of crops are under cultivation this year. These include about 2,200 acres of barley, 1,700 acres of sorghum, 800 acres of cotton, 80 acres of onions, 40 acres

of Bermuda seed, about 1,000 acres of alfalfa. Also included are 501 acres of cantaloupes which matured this year on or about June 10, 1968, and were harvested by Plaintiff following the issuance of the temporary restraining order and preliminary injunction in this proceeding. The cantaloupe crop, which comes once a year, matures about June 10. The planting takes place usually in January, sometimes in February, and requires three to four months for growth. The period of harvest generally lasts about three weeks. Cantaloupes are a highly perishable crop and must be harvested, processed and packed for shipment promptly on reaching maturity or the crops will spoil and become worthless. All but a very small portion of the Plaintiff's cantaloupe crops are marketed outside the State of Arizona and move in interstate commerce. The gross sales value of the Parker crop for 1968 is approximately $700,000.00. Last year Plaintiff's crop amounted to 400 acres, and involved 100,355 crates with a gross sales price of $598,728.26. The cantaloupes grown by Plaintiff at Parker as well as elsewhere are of exceptional high quality. Other districts in which Plaintiff grows cantaloupe crops are the Yuma District in Arizona and the Central Valley of California, the Huron District and this year at Mendota, California.

X

Plaintiff has for many years been engaged in the business of selling and shipping cantaloupes to buyers and receivers in various states of the United States and Canada, to jobbers, wholesalers, chain stores, and the cantaloupe crops grown by the Plaintiff at Parker are grown for the purpose of supplying the requirements of its customers and the ultimate consumer, the general public, throughout the nation. If called to testify, officers of Plaintiff and other witnesses would testify that loss of Plaintiff's cantaloupe crop at Parker would not only cause irreparable damage and injury to the Plaintiff in its re-

lations with its customers, but would also cause serious injury and damage to Plaintiff in its competitive position in the cantaloupe markets of the nation and would result in substantially diminished cantaloupe crops in interstate markets.

XI

Plaintiff does not have at the present time, at its farm at Parker, the processing and packing facilities needed for the handling of cantaloupe crops and preparing them for shipment to market in interstate commerce. To establish such facilities suitable to serve the Parker ranch would require bringing in rail siding for about 20 miles. It is estimated that the detailed engineering involved, cost of procuring land, putting on a rail siding and the work involved in the construction of a facility or shed building sufficient in size to handle the crop and obtaining and installing needed equipment, including bins, dumps, sorting tables, conveyors, presses, lidding machines, crate racks, electric motors, waxers, bushers, loading bins, cull storage bins, cull conveyors, skids, would run in the neighborhood of $200,000.00. The better and more elaborate the facilities are, the better the job which can be done in the processing and packing of the product for market. It would not be feasible to build a shed which would be served by truck rather than by rail. If the trackage, land easements for drainage, siding and equipment could be obtained, the planning and construction would require a number of months, and it would take about six months for the physical job of constructing the needed facilities.

XII

There are two other cantaloupe growers and shippers at the present time in the Parker District, namely, the Garin Company and the Tri-Produce Company. The Garin Company and Tri-Produce also grow or have grown cantaloupes in certain districts in California. In addition, Westside Growers & Shippers

formerly grew cantaloupes in the Parker area. The acreages which these companies have had devoted to cantaloupes in the Parker area during the years in which they have grown cantaloupes in that area are as follows:

The Garin Company

1963	550 Acres
1964	550 Acres
1965	496 Acres
1966	520 Acres
1967	510 Acres
1968	580 Acres

Westside Growers & Shippers

1964	550 Acres
1965	550 Acres
1966	740 Acres

Tri-Produce Company

1967	645 Acres
1968	650 Acres

During each of the above designated years, the Garin Company, Westside Growers & Shippers and the Tri-Produce Company packed their cantaloupes in sheds owned or controlled by them in or near Parker, Arizona, on the Arizona side of the State line. The Garin Company and Tri-Produce, which continue to grow cantaloupes in the Parker District, have acquired excellent reputations as cantaloupe growers and shippers and both pack their cantaloupes according to standards comparable to those of the plaintiff. The two sheds which service the cantaloupe crops of the Tri-Produce Company and the Garin Company are the only packing sheds suitable for handling cantaloupe crops of this size in the Parker area on the Arizona side of the State line. Their facilities, however, are not available to Plaintiff. The produce business is a highly competitive business and cantaloupe growers are in direct competition with one another. Apart from

this, a cantaloupe packing shed is in full operation at capacity during cantaloupe harvest season, from early morning until late after dark, and the grower requires exclusive use of his facilities during such periods. Therefore, it is not feasible to share facilities with another company, or have another company do your packing.

Among the different shippers of cantaloupes, there exist differences of opinion as to how best to pack cantaloupes in order to make them most attractive and in order most effectively to enhance their marketability. Shippers who pack within the State of Arizona or the State of California are subject to the requirements of the inspection service of the State within which they pack; within the bounds of those requirements, however, some shippers go to greater lengths than other shippers in, for example, sorting for color, uniformity of size, and similar factors.

In addition to physical defects, such as softness, sponginess, rot, etc., some individual shippers may give greater emphasis than others to considerations such as appearance and shipping qualities, which, though they are factors separate and apart from physical defects, affect the marketability of the produce. The manner in which an individual shipper packs and the manner in which he sorts for color, uniformity of size, and similar factors, has a substantial effect upon the long-run reputation that his product attains with his buyers; this long-run reputation that the shipper's produce acquires is a matter of prime concern for a shipper such as the Bruce Church Company. This is one of the reasons why the Bruce Church Company would not even want its cantaloupes to be packed by any other company.

The actual packing of the cantaloupes, e.g., the placing of the individual melons in the containers, except in the case of shippers operating in more than one district, such as Plaintiff, Garin Company and Tri-Produce, is not usually done by

full time employees of the shipper, but by transient workmen who customarily work for one shipper during the time that that shipper's crop is being harvested and shipped, and then move on and pack at another shed which serves a crop maturing later in the season. In a given season most of these packers work both in Arizona and in California.

Although there are no packing facilities available to Plaintiff at Parker, Plaintiff does have such facilities under lease at Blythe, California, a distance of approximately 31 miles from the farm at Parker. It is approximately 26 miles from Parker to the State line, and then 5 miles into California to Blythe. In Plaintiff's experience, the facilities at Blythe afford a centralized facility for the most practical, economical and efficient handling of the company's cantaloupe crops in the general area, including the Parker District. If called to testify, officers of Plaintiff would testify that if Plaintiff were required to construct facilities at Parker, its costs would be materially increased and that a centralized facility makes it possible to have better quality control as well as more economical processing, with the end result being a better product at a lower cost to the consumer. The facilities at Blythe were used by Plaintiff in the year 1966 for the processing and packing of its cantaloupe crops grown at Parker in 1966, that being the first year in which such crops had been grown by Plaintiff at the Parker farm, and also again last year, 1967, for the packing of 467 acres of Plaintiff's cantaloupes. Such facilities would not be adequate to handle the cantaloupe production from 1,000 acres, in the event Plaintiff should so increase its production acreage, which it hopes to do. In the event Plaintiff should so increase its cantaloupe production acreage, packing shed facilities sufficient to handle a cantaloupe crop of this magnitude would then be constructed at a location that would be in Plaintiff's economic best interest, considering its total farming operations. The Plaintiff has given some thought and study

to this matter, but has not yet determined whether it would be in the economic best interest of the Plaintiff to locate these facilities at Parker, Blythe or elsewhere. The facilities, if and when built, would be a centralized facility prepared to handle not only cantaloupes but other agricultural products grown by Plaintiff in the general area.

XIII

The cantaloupe crops grown by Plaintiff in 1966 and 1967 in the Parker district and in 1968 after the issuance of the temporary restraining order and preliminary injunction in this matter, were harvested, loaded loose in trailers and transported to Blythe for processing and packing using generally the same type of equipment and processing and packing methods as are used in Arizona. There they underwent the same basic inspection procedure described below, including a rigid inspection by Plaintiff's own personnel as well, were carefully sorted, processed and packed in standard containers, approved in Arizona as well as California, and shipped in interstate commerce. The standard containers used by Plaintiff are the same in whatever district or state, or locations, it operates. There are three sizes of cartons, each being of fixed dimensions, each being assigned a tariff number which is the same in both states, and each being officially approved for use by both the States of California and Arizona. The crate most commonly used is in evidence as Plaintiff's Exhibit No. 1 in the depositions.

Inspectors of the Arizona Fruit and Vegetable Standardization Service are in the fields where the harvest is in process, they inspect the cantaloupes and each day issue pickle worm inspection certificates. This is the same pickle worm inspection which is made with respect to all cantaloupes picked in Arizona and shipped to California and similarly certificated. The inspection certificates given Plaintiff in this manner were given for delivery by Plaintiff to the State of California inspector, stationed on

the Arizona side of the border, at the time the cantaloupes were taken across the state line into California. This has been the daily procedure during each of the past two years. The transportation of said cantaloupe crops, in the manner described, across the state line of Arizona into California, has been accomplished with the knowledge of and without objection or complaint by Defendant, his agents or employees.

If called to testify, officers of Plaintiff would testify that this procedure and practice of inspecting, transporting to Blythe and packing and processing there by Plaintiff was carried out as to grade, quality and pack in the same manner and with the same high standard as its cantaloupe production handled in Arizona at Yuma.

The cantaloupes are brought into the packing shed in trailers. They are then sorted and placed in packing bins. The State Inspectors circulate in and out of the shed throughout the day, on an indeterminate schedule. They will appear unannounced several times during the day, each day, and will inspect the cantaloupes in the bins for defects. If the cantaloupes are running of good quality on a given day, the inspectors will appear with lesser frequency. If the run is of marginal quality, that is with a larger amount of defects, the inspectors appear with greater frequency. If they like what they see, the inspectors will turn and leave, if they do not like what they see, or if the produce is close to tolerance, they will take a "hard" look and inspect very closely. They may even go into the car or truck which has been loaded and visually inspect the cantaloupes in the crates. If they find a condition to exist which goes beyond the tolerance, they will "red tag" the load — even after it has been packed and made ready for shipment. In such case the load must be reconditioned to meet minimum standards or dumped.

The inspectors check not only for defects, but also for sugar content, particularly if the sugar content is running low in the

area at the time. They will cut the cantaloupes, squeeze, take samples and test for total sugar. If the cantaloupes do not make grade the inspectors will hold up the operation and give the shipper an opportunity to get rid of the deficient cantaloupes and bring the produce up to tolerance. If the condition is questionable, the inspectors may go out and check the produce already in the crates and may even "red tag" them.

These same basic procedural steps are generally followed both in Arizona and in California.

In years past, various other growers and shippers, with the knowledge of and without objection or complaint by Defendant, his agents or employees, have transported cantaloupe crops, as well as other agricultural crops, in bulk across the state line of Arizona into the State of California for processing, packing and shipment in interstate commerce. Attached hereto and made a part hereof as Exhibit "B" is a document showing produce grown in the Parker District of Arizona in past years and taken across the state line in bulk to Blythe, California, for processing and packing there. The list was prepared by Mr. Pike on the basis of statistics appearing in the Service's official annual reports for the years in question. The list was identified as Defendant's Exhibit No. 1 in Mr. Pike's deposition on file herein and the annual reports were identified as Defendant's Exhibits 5 through 18, respectively, also on file herein. The list shows only watermelon, honeydew and cantaloupe crops, by acreages, although lettuce also was a commodity similarly handled. In the years covered (1953-1967) several different growers and shippers harvested their Parker crops and transported them across the State line into Blythe for packing and shipment in interstate commerce, among them S. L. Eaton Farms, Martin Produce Co., Independent, Garin Company, Noroian Farms, Nish Noroian Farms. The existence of this practice prior to the time Plaintiff commenced operations at Parker, was noted, and reported without objection, in the official

reports of the Defendant's department for the years in question. (Def. Ex. 5-18). Although not reflected on the list, the practice commenced earlier as appears from a letter dated September 27, 1968, from the Land Operations Officer, Bureau of Indian Affairs, Parker, Arizona, which letter is attached hereto as Exhibit "C" and by reference made a part hereof. Over the years, mixed melons, carrots, citrus, onions, barley, milo and alfalfa have been moved in bulk from the Parker Valley or other Arizona Districts into California through Blythe.

In January of 1968, Plaintiff undertook to plant and grow another cantaloupe crop to mature about June 10, 1968, which it proposed to harvest, place in trailers and transport in bulk to Blythe for processing, packing and shipment in accordance with the practice of prior years.

On March 22, 1968, by written notice to Plaintiff, Defendant informed Plaintiff he would not permit Plaintiff to transport its cantaloupe crops across the state line of Arizona into California for processing and packing there as above described. At the time notice was given, Defendant was aware that Plaintiff did not have processing or packing facilities in Parker. Defendant did thereafter, pursuant to his notice, prevent and prohibit such loading and transportation by Plaintiff of its cantaloupe crops across the state line of Arizona into California in the manner and for the purpose aforesaid.

XIV

Although the quality of cantaloupes grown in Arizona varies from year to year and from district to district according to growing conditions existing at the time, cantaloupes grown at Parker are considered ordinarily to be of higher quality than those grown in other districts in Arizona.

A certain segment of produce buyers known as "ground Buyers" usually inspect the individual crop and place their orders according to district, that is, specifying a particular district from

which the order is to be filled. Other buyers, known in the industry as "the wire trade," usually do not specify the district from which the order is to be filled.

XV

The State of California also has standardization laws which apply to cantaloupe crops grown in that state and processed and packed for shipment in that state. These are contained in the California Agricultural Code, Sections 3, 42941, 43251, 45633, 45663, 45664 and other sections. Among the provisions of such Code are provisions (Sections 45633, 45663 and 45664) which provide for packing of cantaloupes in standard containers of the same sizes and descriptions as those prescribed in Arizona. These standard containers are of uniform dimensions and specifications adopted by the pertinent authorities as part of a plan to achieve uniformity among growers and shippers in the Western States generally. They are so used by growers, many of whom carry out the same growing, packing and shipping operations in the several states, such as Arizona and California, as does Plaintiff. Such growers supply the same customers with the same agricultural products, packed in the same uniform containers, from both the States of Arizona and California. The equipment used by such growers in their processing and packing operations in both States is the same, geared to handling the same uniform containers. There exists generally a close liaison between the California produce industry and the Arizona produce industry. Some growers and shippers are Arizona residents operating in Arizona and California and vice versa. For many years, growers in the Bard Valley of California, including growers of cantaloupes, Plaintiff among them, have been transporting their products across the state line of California into Yuma on the Arizona side of the Colorado River for processing, packing and shipment to interstate markets, in the same manner as has been done from Parker to Blythe. This has been known to Defendant. The conditions and stand-

ards provided by the Standardization Laws of Arizona and California are likewise based on the same primary objectives, namely, to avoid deceptive packs.

XVI

Accordingly, a case or actual controversy has arisen and now exists between Plaintiff and the Defendant, and each of them, in the following respects:

A. Defendant contends that:

(1) The regulatory provisions of the Arizona Fruit and Vegetable Standardization Act constitute a valid and permissible exercise of the police power reserved to the State of Arizona and do not contravene any provisions of the United States Constitution.

(2) Congress has not enacted legislation which has pre-empted the field of regulating the packaging and handling of cantaloupes prior to their shipment in interstate commerce.

(3) The packing of fruits and vegetables occurs at a stage prior to the time that such fruits and vegetables have entered the stream of interstate commerce; the regulation of the packing of fruits and vegetables may therefore be undertaken by a state free from commerce clause strictures.

B. Plaintiff contends that:

(1)It has a right under the Constitution and laws of the United States to harvest its crops of cantaloupes grown at Parker, Arizona, place them loose in trailers, and so transport them across the state line to its facilities at Blythe, California, for processing and packing in the manner and under the conditions heretofore described;

(2) Any interpretation, application or enforcement of the Arizona Fruit and Vegetable Standardization laws in the manner proposed and threatened by Defendant would constitute an unreasonable and undue burden upon, and obstruction of, interstate commerce, in violation of the Commerce Clause, Article I,

Section 8, of the Constitution of the United States and would be violative of Plaintiff's rights thereunder as aforesaid;

(3) The Congress of the United States by various enactments, including the Agricultural Adjustment Act, of May 12, 1933, Chapter 25, Title 1, 48 Stat. 31 et. seq., Title 7 U.S. Code § 601, et seq., and subsequent amendments thereof, the Act of August 14, 1946, Chapter 966, Title II, Sections 202-208, 60 Stat. 1087, 7 U.S. Code Section 1621-1627; the Act of March 4, 1915, Chapter 158, 38 Stat. 1186, 1187, 15 U.S. Code § 234-236; the Act of August 31, 1916, Chapter 426, 39 Stat. 673-674, 15 U.S. Code, § 251-256; the Act of May 21, 1968, Chapter 664, 45 Stat. 685-687, 15 U.S. Code, § 257-257i; and other enactments has entered and pre-empted the field in respect of regulating the containerization requirements in connection with packaging, transporting, shipping or handling of agricultural products and commodities in interstate commerce, and accordingly, the state laws and regulations sought to be enforced by the Defendant herein are in derogation of the rights of the Plaintiff and are violative of the Supremacy Clause, Article VI, of the Constitution of the United States;

(4) If and to the extent that the Arizona Fruit and Vegetable Standardization Laws are interpreted, applied, given effect or enforced to prevent Plaintiff, such laws unreasonably discriminate against out-of-state processors and packers in favor of Arizona processors and packers and are unlawful and void;

(5) If and to the extent that the action threatened by Defendant or the interpretation or effect being given by him to the Arizona laws is sought to be based upon the police power of the state, that is to say the protection of the public health, safety, or welfare of the citizens of the State of Arizona, this cannot serve as any legal or valid basis for the infringement upon interstate commerce which it would effect since the crops so transported will not be returned for marketing or sale in the State

of Arizona until they have been processed and packed in compliance with the Fruit and Vegetable Standardization laws of the State of California, which have standardization requirements like those of Arizona; and

(6) If and to the extent that the action threatened by the Defendants or the interpretation or effect sought to be given by them to the Arizona laws have as their purpose and object to serve the economic interests of Arizona growers, packers and shippers to the detriment and disadvantage of those seeking to accomplish their processing, packing and shipping in the State of California under like standards and conditions, such action and such laws constitute an unreasonable discrimination against and burden upon those growers, processors and packers in interstate commerce and are unlawful and void.

(7) The acts threatened by Defendant would constitute an unlawful interference with Plaintiff's contractual relations under the contract clause of the Constitution, Article I, Section 10.

XVII

Processing and packing facilities required for the handling of Plaintiff's 1968 cantaloupe crops at Parker, Arizona, could not have been constructed by June 10, 1968, when the cantaloupe crops of this year would have reached maturity, or in sufficient time before the cantaloupe crops had to be harvested. If Plaintiff had been prevented by Defendant from transporting its cantaloupe crops across the state line loose in trailers for the purposes aforesaid in 1968, it would have resulted in a loss in gross sales this year alone in the amount of approximately $700,000.00. If called to testify, officers of Plaintiff would testify that any such conduct by Defendant in future years would cause Plaintiff loss and damage in large undetermined amounts and would cause serious interference with Plaintiff's contractual relations with the Secretary of Interior of the United States of America, as lessor, the Commissioner of Indian Affairs, the

Colorado River Agency, the Colorado River Indian Tribe, the lessor of Plaintiff's processing and packing facilities at Blythe, and with the interstate customers of Plaintiff, to whom continuity of supply is of great importance; and that such conduct will also seriously interfere with and materially impair the successful development of the Indian lands administered by the United States Department of the Interior in the Parker area, and tend to discourage and frustrate private investment in the development of these waste lands into productive farm lands.

If called to testify, officers of Plaintiff would testify that the standing of a grower in the trade is directly affected by his ability to afford a customer a continuing supply of a given product and any reduction in Plaintiff's ability to carry its Parker products to market would seriously affect its customer relations. The cantaloupe crops grown by Plaintiff at Parker represent a substantial part of the cantaloupe supplies coming out of the Parker area — approximately one-third, and if this crop is lost to Plaintiff, not only will its competitive position in the industry be damaged, but the reduced quantities of cantaloupes going to market will result in higher prices to the buyer and consumer public and, of course, Plaintiff's competitors will benefit at Plaintiff's expense from increased prices for their own products because of the diminished supplies going to market. Defendant's Exhibits No. 2 and 3 to his deposition of June 5, 1968 are lists showing the various cantaloupe growers having current acreages in other districts of Arizona.

The lease which Plaintiff has on the facilities at Blythe calls for a minimum rental guarantee of $6,000 per year. If the crop is packed at Blythe, the minimum will be considerably exceeded at the 10¢ per packed crate rate provided. If the temporary restraining order and preliminary injunction herein had not issued and Plaintiff had not been able to transport the 1968 crop to Blythe for packing, Plaintiff would have suffered the loss of the guaranteed amount and, of course, considerable loss would

have been suffered by Plaintiff's Lessor who made the lease without knowing that Defendant would seek to prevent the crop being packed at Blythe. The present lease was entered into by Plaintiff and its lessor on November 17, 1966, after the 1966 melon harvest to cover the 1967 and 1968 Blythe-Parker melon seasons. Although such lease expires in November following the 1968 melon season, officers of Plaintiff, if called to testify, would testify that it has been and presently is their plan to renew said lease and continue the use of the processing and packing facilities in Blythe unless prevented from doing so by Defendant.

XVIII

Further, in order to pack and ship its cantaloupe crops this year, it is necessary that Plaintiff have a large supply of packing crates and ice, which are inventoried at Blythe, California in advance, so as to be ready for immediate use when the crops mature and the harvest commences. Plaintiff must, of necessity, place orders for such supplies and must make further commitments as well as arranging for availability of the required railroad cars for interstate shipments if the crop is not to be lost for lack of these supplies and equipment. If Defendant is not restrained and enjoined from carrying out his orders and threats, Plaintiff will sustain heavy loss in respect of the supplies already committed for and will be placed in great jeopardy in respect of the supplies and equipment still to be obtained.

XIX

The products here involved are not being brought *into* the State of Arizona from other states, but are to be taken *out* of the State of Arizona for processing and packing.

XX

There are no administrative remedies available to Plaintiff; Plaintiff has no adequate remedy at law and will be irreparably injured, and this is a proper case for equitable relief and the

relief prayed for, if the acts of the Defendant in threatening, ordering, attempting, or acting to enforce the provisons of the Arizona Fruit and Vegetable Standardization laws against Plaintiff, so as to hinder, interfere with, impede, restrain, prohibit and prevent Plaintiff from transporting its cantaloupe crops loose in trailers across the state line of Arizona to Plaintiff's processing and packing facilities at Blythe, California, are wrongful or unlawful.

The issue here presented is a present and continuing one and will not be rendered moot by the expiration of the 1968 harvest season. Plaintiff's crop program and crop plans call for continued cantaloupe crops in the Parker district in the years to come, much or all of which Plaintiff proposes to harvest and transport across the state line into California for processing and packing as herein described. Likewise, the Defendant's prohibition thereof, as heretofore stated, is a present and continuing one, and unless restrained and enjoined by this Court, Defendant will seek to prevent such practice by Plaintiff in the future.

XXI

The Complaint herein was filed on May 27, 1968. The Answer was filed on June 24, 1968. On May 27, 1968 a Temporary Restraining Order, as prayed for, was made and issued by the Honorable Walter E. Craig, United States District Judge, and the said Order was duly served on the Defendant on May 28, 1968.

Thereafter, a three-judge court, consisting of the Honorable Charles M. Merrill, Judge, United States Court of Appeals for the Ninth Circuit, the Honorable Walter E. Craig, Judge, United States District Court for the District of Arizona, and the Honorable Carl A. Muecke, Judge, United States District Court for the District of Arizona, was convened to hear the matter of the Preliminary Injunction. Hearing thereon was had in Phoenix

on June 7, 1968. A Preliminary Injunction as prayed for was made and issued on June 7, 1968, by a unanimous court.

After the filing of the Complaint and prior to the hearing on the Preliminary Injunction, depositions were taken of David Gipe, General Manager of the Arizona operations of Plaintiff, and the Defendant L. J. Pike. The transcripts of their depositions and the Exhibits offered in connection therewith were made part of the record of the hearing on the Preliminary Injunction, and the said depositions and Exhibits, as well as the transcript of the hearing on the Preliminary Injunction (which included oral testimony of Mr. Gipe and of Thomas H. McNamara, President of Plaintiff, as well as documentary matter) are incorporated herein and made a part of this stipulation. At the time of Mr. Pike's deposition, counsel for Plaintiff asked for a copy of the minutes of a certain meeting of the Arizona Vegetable Growers Association. A copy of the minutes of the meeting of the Arizona Vegetable Growers Association, referred to in the deposition of Mr. L. J. Pike, was supplied to counsel for the Plaintiff after the deposition was concluded. Those minutes state that current legislation before the Arizona Legislature was discussed at the meeting. Two bills were discussed. The first concerned the use of DDT, and the second the bulk movement out of the State of vegetables and melons. The minutes state that the DDT bill was referred to a committee of the Association for further study, and that as to the latter bill, no formal action was taken by the Board.

Dated this 4th day of November, 1968.

ABRAMSON & CHURCH
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By JAMES M. BUSH
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From range land to developed land in four years

The Story of the Bruce Church, Inc. Parker, Arizona Farm

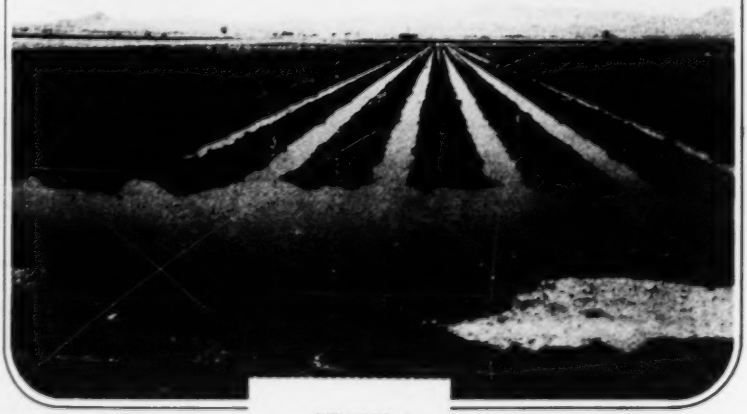
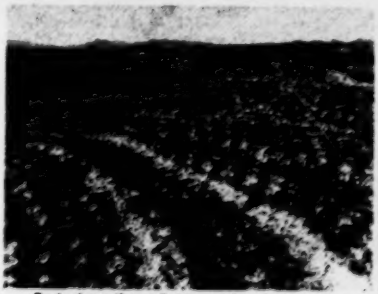


EXHIBIT A

Brushing was the first phase of land subjugation. Pairs of D-6 Crawler Tractors cleared mesquit brush by chain-dragging with 150-foot anchor chains.

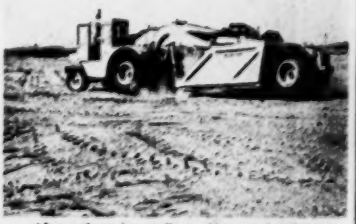
Large horizontal knives mounted on crawler tractors was used to fracture hard-pans for better water penetration of the sun-baked soil.



To develop uniform soil structures throughout the farm, over 6 million yards of dirt were moved in rough grading operations—946 yards per acre.

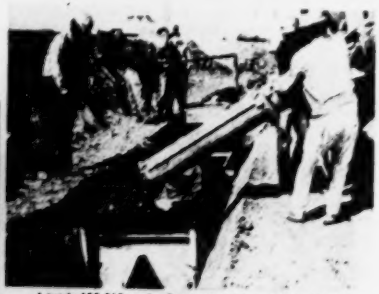
Large cuts were necessary on many parts of the farm to obtain uniform soil structures. Here, the original ground level is illustrated by this mound of earth.

Earth moving operations were carried out by large Euclid TS Machines. These machines were kept busy throughout the four-year development period.

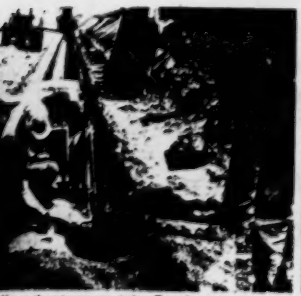


After earth moving, smaller machines were brought in to fine-grade each of the 40-acre fields, to obtain a uniform 6/10th-foot drop over 640-foot field length.

To build irrigation system, Cleveland Ditcher excavated trenches for the placement of pipe in the underground system. Shoe on bottom of ditcher shapes trench.



A total of 33,513 yards of concrete were used to lay 41.21 miles of monolithic underground irrigation pipes every quarter mile across length of farm.



...ing rough spots on cement pipe. Trencher is in upper ...of photo, boom truck with dual wheels in center, and ...ming "boats" and pipe in foreground.

Cement irrigation risers were placed in irrigation system every 47 feet. Water control valve was then placed on top of risers.

After completion, irrigation risers were covered with earth to within two inches of the surface. Company-built canal supplies risers 7,000 gallons per minute.

Company-built cement-lined canal runs entire 16,500 foot length of farm, bisecting it into two equal halves. Canal has five-foot bottom and is 20 feet across top.

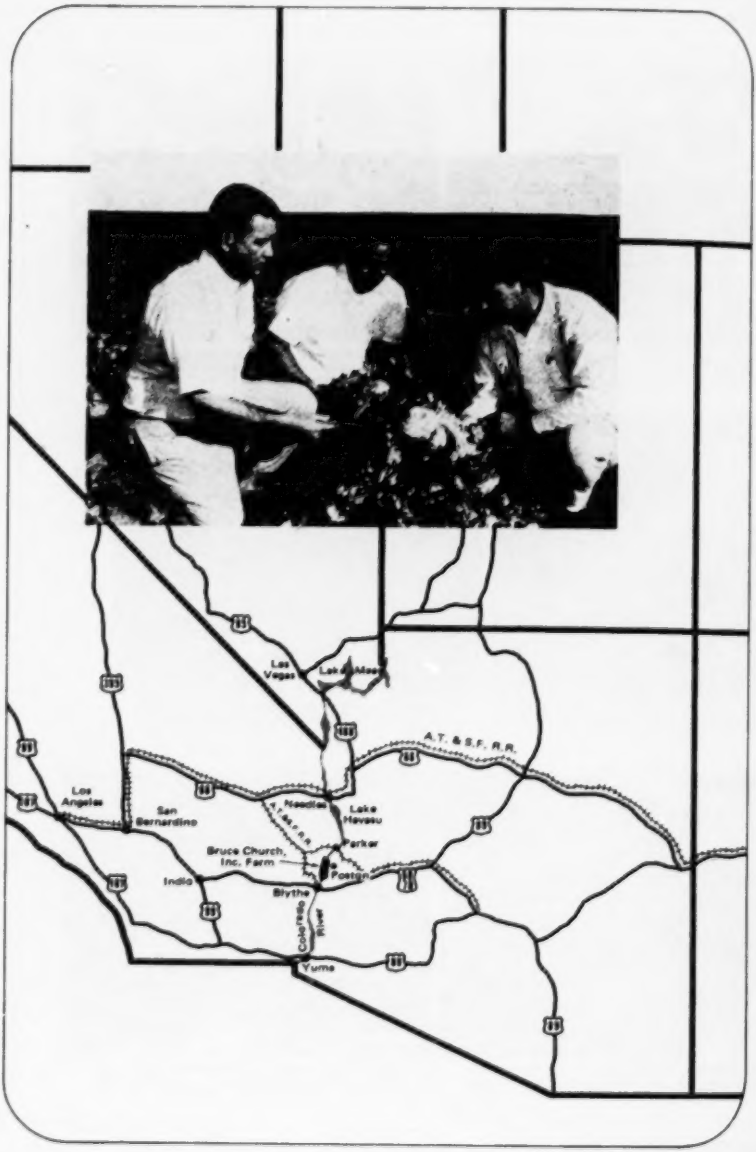

Las Vegas
Lake Mead
A.T. & S.F. R.R.
Los Angeles
San Bernardino
Needles
Lake Havasu
Parker
Bruce Church, Inc. Farm
Poston
India
Blythe
Colorado River
Yuma

EXHIBIT B

PRODUCE GROWN IN ARIZONA BUT PACKED AND SHIPPED FROM BLYTHE, CALIF.

Name of Shipper	*Watermelons*	*Honeydews*	*Cantaloupes*	
1966-67:				
Eaton Farms, S. L.	—	.220	80	
Church, Inc., Bruce	—	—	400	
1965-66:				
Noroian Farms, Nish	165	—	—	
Eaton Farms, S. L.	—	165	234	
Church, Inc., Bruce			80	
1964-65:				
Noroian Farms, Nish	320	—	—	
Eaton Farms, S. L.	—	—	200	
Independent	—	—	90	
1963-64:				
Noroian Farms	180	—	—	
Eaton Farms, S. L.	—	300	300	
Garin Co., The	—	110	—	
Martin Produce Co.	—	34	170	
1962-63:				
Eaton Farms, S. L.	—	220	280	
1961-62:				
Eaton Farms, S. L.	—	—	180	
1960-61: Nothing				
1959-60: Nothing				
1958-59: Nothing				
1957-58: Nothing				
1956-57: Nothing				
1955-56: Nothing				
1954-55: Nothing				
1953-54: Nothing				
TOTAL	665	1049	2014	
GRAND TOTAL				3648
				80
				3728

EXHIBIT C

IN REPLY REFER TO:

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

Colorado River Agency
Parker, Arizona 85344

September 27, 1968

TO WHOM IT MAY CONCERN:

The crop reports for the Colorado River Indian Irrigation Project show that, in the following listed years, cantaloupe and/or honeydew melons were produced on the project.

Year	*Acres*
1948	234
1949	162
1950	360
1951	320
1952	—
1953	—
1954	500
1955	600
1956	460
1957	526
1958	1940
1959	1527
1960	1049
1961	No Report
1962	1386
1963	1610
1964	2021
1965	1192
1966	1580
1967	1979

Our records do not document the individual grower, the extent of his crop or where it was processed.

We have accumulated the following history by interview in an attempt to show where processing was accomplished.

In the early part of the melon history Mr. Chet Johns of the Pacific Farms did grow a melon crop and attempted to process the crop in both Blythe and Yuma. Part of the Pacific Farms' crop was processed in Blythe, California at the Wilco Packing shed.

The Wilco Produce Company of Blythe, California grew melon crops from about 1949 through 1962 and processed part of their crop grown on the project in their Blythe facility.

Mr. Martin Bedorian of Suzy Bel Farms of Blythe, California processed his crop in Blythe, California at the Wilco Packing facility.

Mr. Sax Eaton of the S. L. Eaton Farms has grown a melon crop since about 1962, and also has processed his crop in Blythe, California.

The Bruce Church Company grew their first crop in 1966 and since that time have grown yearly crops and processed them in Blythe, California.

It appears that some melon crop grown on the project has been processed in Blythe, California every year since 1948. A more detail history could be completed by researching the old files of the Wilco Produce Company of Blythe, California.

Sincerely yours,

Tim C. Dye

Land Operations Officer

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

BRUCE CHURCH, INC., a California corporation, Plaintiff, vs. L. J. PIKE, as Supervisor of Inspection of the Arizona Fruit and Vegetable Standardization Service, et al., Defendants.	NO. CIV. 6702 - Phx. PRELIMINARY INJUNCTION

This cause coming on to be heard upon the application of Bruce Church, Inc., plaintiff in the above entitled action, for a preliminary injunction, and upon plaintiff's verified complaint, no answer having been filed by defendant, and upon the evidence introduced by both plaintiff and defendant, and after hearing counsel for the respective parties, and it appearing to the Court:

1. That the Court has jurisdiction over this controversy.

2. That plaintiff is engaged in the business of growing, packing and shipping fresh fruits and vegetables, including cantaloupes, both in the States of Arizona and California and that such crops grown by plaintiff and other shippers are sold in interstate commerce.

3. That defendant L. J. Pike, purporting to act under authority of law and pursuant to certain sections of Title 3, Chapter 3, Article 4, Arizona Revised Statutes, has threatened and does threaten to interfere with, impede, restrain, prevent and prohibit plaintiff from loading and transporting, loose and in bulk, a crop of cantaloupes, grown by plaintiff at Parker, Arizona,

across the state line of Arizona into the State of California for processing, packing and shipping into interstate and foreign commerce; and

4. That said crop of cantaloupes will mature and be ready for harvest, processing, packing and shipping within the next week or ten days, and for a period of three to five weeks thereafter; that plaintiff does not have and there is not available to plaintiff at Parker, Arizona, adequate facilities for processing, packing and shipping said cantaloupes; that plaintiff does have adequate processing, packing and shipping facilities for said cantaloupes in Blythe, California, and that if said crop of cantaloupes is not promptly processed, packed and shipped by plaintiff by and through the use of its facilities at Blythe, California, such crop will spoil and plaintiff will sustain an unrecoverable financial loss of approximately $300,000.00; and

5. That if plaintiff is not permitted to process, pack and ship its crop of cantaloupes, as aforesaid, at its facilities in Blythe, California, it will sustain a further financial loss and damage as the result of loss of customers and markets and a competitive position in the produce industry, the amount of such damage being impossible to ascertain with any degree of certainty.

6. That the containers in which plaintiff's cantaloupes will be packed and shipped are in all respects identical to those required under the laws of the State of Arizona, and that the laws of the State of California with respect to inspection, packing, grading, marking and shipping of cantaloupes are in all material respects substantially similar to applicable laws of the State of Arizona; and

7. That for a number of years prior hereto, certain growers and shippers, including plaintiff, have transported cantaloupes, loose and in bulk, across the state line of Arizona for processing, packing and shipping and that such practice has been with the knowledge and approval and without interference of Defendant Pike or the State of Arizona; and

8. That there is a substantial question of whether any interpretation, application or enforcement of the Arizona Fruit and Vegetable Standardization Laws in the manner proposed and threatened by defendant, as alleged in plaintiff's complaint, would constitute an unreasonable and undue burden upon and obstruction of interstate commerce in violation of the Commerce Clause, Article 1, Section 8, of the Constitution of the United States and, therefore in violation of plaintiff's rights; and

9. That neither defendant Pike nor the State of Arizona will sustain material damage or injury if the preliminary injunction is granted.

For the reasons hereinabove set forth, and because of the irreparable nature of plaintiff's injury, and, further, because plaintiff has no adequate remedy at law, it appears to the Court that a preliminary injunction should issue as prayed for in plaintiff's complaint.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that plaintiff's application for preliminary injunction be and the same hereby is granted, and that pending trial of this matter defendant L. J. Pike, his deputies, agents, servants, employees, and attorneys, and all persons in active concert and participation with them be and are hereby restrained from in any manner, either directly or indirectly threatening, ordering, attempting or acting (a) to hinder, interfere with, impede, restrain, prohibit or prevent the plaintiff from harvesting its crops of cantaloupes, grown by plaintiff in the State of Arizona, in, around or about Parker, Arizona, and from placing the same loose in trailers and transporting them across the state line of Arizona into the State of California for processing and packing in standard containers like those in use in Arizona, preparatory to shipment and shipment to buyers or consignees in the various states of the nation and foreign commerce; (b) to seize and take possession of any crops so harvested, loaded or transported; (c) to take any action to forfeit bonds or to deny or revoke licenses of

plaintiff because of such harvesting, loading or transportation of such crops; or (d) to take any other action penalizing, injuring or damaging plaintiff on account or because of such harvesting, loading or transporting.

IT IS FURTHER ORDERED that said preliminary injunction shall remain in full force and effect until final hearing in this case and further order of this Court.

DATED this 7th day of June, 1968.

s/ Charles M. Merrill
Judge, United States Court of
Appeals For The Ninth Circuit

s/ Walter E. Craig
United States District Judge

s/ C. A. Muecke
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

BRUCE CHURCH, INC., a California corporation,

Plaintiff,

vs.

L. J. PIKE, as Supervisor of Inspection of the Arizona Fruit and Vegetable Standardization Service, et al.,

Defendants.

No. Civ-6702 Phx.

OPINION AND ORDER

CRAIG, D. J.

The within action was instituted by plaintiff, Bruce Church, Inc., a California corporation, against L. J. Pike, as Supervisor of Inspection of the Arizona Fruit and Vegetable Standardization Service, and others.

Plaintiff is engaged in extensive agricultural operations, including the growing, harvesting, packaging and shipping of agricultural products in California and Arizona.

In 1964 plaintiff entered into a lease with the Secretary of the Interior, the Commissioner of Indian Affairs, the Colorado River Indian Agency and the Colorado Indian Tribes under the terms of which plaintiff undertook, at substantial expense, to develop 6,400 acres of unimproved land in the Colorado River Indian Reservation near Parker, Arizona. Plaintiff does not have packing facilities at Parker and at least in the foreseeable future apparently had no intention of developing packing facilities at that location for the reason that it had adequate facilities at Blythe, California, some 31 miles distant, which could be economically used in sorting, grading, packing and shipping the produce

grown and harvested on the Arizona side of the river. It was plaintiff's intention and practice to harvest its melons grown in the Parker area, to load them in trailers and to haul the bulk load to plaintiff's packing facilities at Blythe, where the melons were sorted, inspected, packed and shipped.

Title 3, Chapter 3, Article 4, Arizona Revised Statutes constitutes the Arizona Fruit and Vegetable Standardization Act (§§ 3-481 et seq., A.R.S.) § 3-843 of the Act provides for the creation of the office of Supervisor of Inspection, charged with the responsibility of enforcing the provisions of the Act. Defendant Pike currently holds that position. The Arizona Act includes certain requirements with respect to containers, labeling, inspecting, grading, licensing, etc., and provides certain sanctions for failure to comply with the provisions of the Act or the Rules and Regulations promulgated thereunder.

In March, 1968, defendant Pike, acting in his official capacity and under his interpretation of the Fruit and Vegetable Standardization Act, *supra,* notified plaintiff that no future transportation of bulk shipments of cantaloupe harvested by plaintiff would be allowed out of the State of Arizona to the plaintiff's packing facilities at Blythe, California.

Under the provisions of Article 1, § 8 of the United States Constitution (Commerce Clause) and Article 6 of the United States Constitution (Supremacy Clause) and pursuant to the provisions of Title 28 U.S.C. § 2201, plaintiff instituted this action questioning the constitutionality of the Arizona Fruit and Vegetable Standardization Act, *supra,* insofar as its enforcement by defendant Pike under his interpretation of the Act constitutes an unreasonable and unlawful burden upon interstate commerce. This Court has jurisdiction by virtue of Title 28 U.S.C. § 1331 and Title 28 U.S.C. § 1332.

The complaint questions the constitutionality of a state statute. Consequently, a Three Judge Court was convened pursuant to Title 28 U.S.C. §§ 2281, 2284. In order to conserve the crop

then being harvested, a temporary restraining order was issued by this Court and continued by stipulation until a hearing on the merits on June 7, 1968.

A temporary injunction issued from this Court pending ultimate determination of the issues, which injunction restrained the defendant Pike from further acts of deterrence with respect to plaintiff's bulk shipments of melons from its farms in Arizona to its packing plant in California.

The parties have entered into an agreed statement of facts as to which this Court has taken notice. The parties have submitted memoranda in support of the respective positions of the parties.

We are first confronted with the question as to whether the abstention doctrine should be invoked in this case. To paraphrase the question propounded by the United States Supreme Court in *Burford v. Sun Oil Co.*, 319 U.S. 315, 318, 63 S.Ct. 1098, 1099, and quoted in *Alabama Public Service Commission v. Southern Railway Co.*, 341 U.S. 341, 71 S.Ct 762:

> "Assuming that the federal district court had jurisdiction, should it, as a matter of sound equitable discretion, have declined to exercise that jurisdiction here?"

Many cases involving Three Judge Courts with jurisdiction predicated upon both the presence of a federal question and diversity of citizenship have invoked the abstention doctrine. *See Harrison v. NAACP*, 360 U.S. 167, 79 S.Ct. 1025; *Alabama Public Service Commission v. Southern Railway Co., supra.* The issue here is whether this case presents a situation in which this Court should exercise the power of abstention. Apparently there is no clear cut rule existing to guide a Court in making this determination. Certain criteria, however, appear in existing decisions that indicate when it is appropriate to exercise the power of abstention. In *Harrison, supra,* the Court stated:

> "This now well-established procedure is aimed at the avoidance of unnecessary interference by the federal courts with

proper and validly administered state concerns, a course so essential to the balanced working of our federal system. To minimize the possibility of such interference a 'scrupulous regard for the rightful independence of state governments * * * should at all times actuate the federal courts,' (authorities cited) as their 'contribution * * * in furthering the harmonious relation between state and federal authority * * *.' (authorities cited) In the service of this doctrine, which this Court has applied in many different contexts, no principle has found more consistent or clear expression than that the federal courts should not adjudicate the constitutionality of state enactments fairly open to interpretation until the state courts have been afforded a reasonable opportunity to pass upon them. (authorities cited) This principle does not, of course, involve the adbication [sic] of federal jurisdiction, but only the postponement of its exercise; it serves the policy of comity inherent in the doctrine of abstention; and it spares the federal courts of unnecessary constitutional adjudication. (authorities cited)"

A recent discussion of the abstention doctrine in *Zwickler v. Koota,* 88 S.Ct. 391, 395, states that the power should be exercised "only in narrowly limited 'special circumstances'." Among the "special circumstances" noted in *Zwickler* are (1) the susceptibility of a state statute to a construction by the state courts that would avoid or modify constitutional questions before the federal court, and (2) the possibility that adjudication would disrupt state administrative processes. In *Zwickler* neither of these "circumstances" was present, and the court held, therefore, that it was error for the district court to apply the doctrine. The court found application of the doctrine inappropriate where plaintiff attacked a state statute on its face as being repugnant to the First Amendment. We do not believe the instant case an appropriate one to invoke the abstention doctrine.

The Arizona Fruit and Vegetable S ndardization Act has never been constitutionally construed by the Arizona courts, nor do we believe it necessary to the disposition of this case to determine the constitutionality of that Act. Moreover, a present adjudication

of this case through constitutional interpretation might well disrupt the legitimate interests of the State of Arizona.

A reading of the Act reveals no clear basis nor authority for the issuance of the order by the defendant, Supervisor of Inspection of the Arizona Fruit and Vegetable Standardization Service, which order has been attacked by the plaintiff in this case. The constitutionality of the Act, then, is not in question. What is in question is the construction placed upon that Act by the Superintendent and the constitutionality of the order issued by him pursuant to his construction.

A review of the agreed statement of facts and the Act in question indicates that the order complained of constitutes an unlawful burden upon interstate commerce. *See Foster Fountain Packing Co. v. Haydel,* 278 U.S. 1, 49 S.Ct. 1; *Johnson v. Haydel,* 278 U.S. 16, 49 S.Ct. 6; *Schafer v. Farmers Grain Co.,* 268 U.S. 189, 45 S.Ct. 481; *Lemke v. Farmers Grain Co.,* 258 U.S. 50, 42 S.Ct. 244. If the application of the Arizona Fruit and Vegetable Standardization Act, as interpreted by the Supervisor of Inspection, could be construed to be a valid interpretation and application of the statute, then the statute so interpreted and applied is unconstitutional.

WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the injunction heretofore issued restraining the defendant, L. J. Pike, his deputies, agents, servants, employees and attorneys and all persons in active concert and participation with them from in any manner, either directly or indirectly, threatening, ordering, attempting or acting (a) to hinder, interfere with, impede, restrain, prohibit or prevent plaintiff from harvesting its crops of cantaloupe grown by plaintiff in the State of Arizona, in the vicinity of Parker, Arizona, and from transporting said cantaloupe in bulk into the State of California; (b) to seize and take possession of any crops harvested, loaded or transported; (c) to take any action to forfeit bonds, or to deny or revoke licenses of the plaintiff because of harvesting, loading or transporting such crops; or (d) to take any other

action penalizing, injuring or damaging plaintiff on account of or because of such harvesting, loading or transporting in interstate commerce shall be permanent.

DATED this 4th day of March, 1969.

CHARLES M. MERRILL
Charles M. Merrill, U.S. Circuit Judge

WALTER E. CRAIG
Walter E. Craig, U.S. District Judge

C. A. MUECKE
C. A. Muecke, U.S. District Judge

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Supreme Court of the United States

No. 301 ---- , *October Term, 19* 69

Loren J. Pike, etc.,

Appellant,

v.

Bruce Church, Inc.

APPEAL from the United States District Court for the District of Arizona.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is placed on the summary calendar. This case is set for oral argument with No. 185 in which jurisdiction was noted today.

October 13, 1969